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In the Supreme Court of the United States.

OCTOBER TERM, 1903.

ULYSSES S. G. WHITE, APPELLANT,
v.
THE UNITED STATES. } No. 75.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

STATEMENT.

This cause was heard in the Court of Claims of the United States on the 31st day of March, 1902, and the court made the following findings of fact:

FINDINGS OF FACT.

I.

The claimant, Ulysses S. G. White, was on the 9th day of January, in the year 1887, appointed a civil engineer in the Navy from civil life. He remained such civil engineer and was such at the time of the passage of the Navy personnel act of March 3, 1899.

II.

The claimant, by reason of service in the Army, amounting to six years seven months and twenty-one days, previous to his entry into the Navy, reached the maximum pay of his grade, $3,500, May 19, 1885, under Revised Statutes, sections 1478, 1556. Thus the amount of pay received by him between the 9th of January, 1877, and the 19th of May, 1885, was as follows:

Three years and 130 days, at $2,700 per annum	$9,061.64
Five years, at $3,000 per annum	15,000.00
Total	24,061.64

If he were, upon the date of his appointment, credited for computing his pay with five years' service, and entitled to be paid from that date, he would receive pay at the following rates:

Three years and 130 days, at $3,000 per annum	$10,068.49
Five years, at $3,500 per annum	17,500.00
Total	27,568.49

or $3,506.85 more than he has previously received.

(Record, p. 3.)

Upon the foregoing findings of fact the court below rendered judgment dismissing the claimant's petition. From the judgment so entered the claimant makes this appeal.

Section 1556 Revised Statutes fixes the pay of officers of the Navy and we here give that por-

tion of the section applicable to the pay of civil engineers:

> SEC. 1556. * * * during the first five years after date of appointment, when on duty, two thousand four hundred dollars; on leave or waiting orders, one thousand five hundred dollars; during the second five years after such date, when on duty, two thousand seven hundred dollars; on leave or waiting orders, one thousand eight hundred dollars; during the third five years after such date, when on duty, three thousand dollars; on leave or waiting orders, two thousand one hundred dollars; after fifteen years from such date, when on duty, three thousand five hundred dollars; on leave or waiting orders, two thousand six hundred dollars.
>
> (See sec. 1556, p. 267, Revised Statutes.)

By reference to the findings it will be seen that this claimant arrived at his maximum pay ($3,500) May 19, 1885, and that on said day he had been in the Navy just 8 years, 4 months, and 10 days, or, as it is designated in the record, 8 years and 130 days.

By reason of services in the Army for 6 years, 7 months, and 21 days prior to his appointment in the Navy, he was credited with said service in the Army, which, added to the time he served in the Navy, brought his total service, whereby he reached his maximum pay, to the amount of 15 years. It will be observed by the said section 1556 that there are three lustrums of pay for civil engineers, the

first by which during the first five years the officer for his normal services receives $2,400; during the second five years, $2,700; during the third five years, $3,000, and after 15 years, $3,500, which may be considered, of course, as continuous.

By reason of the prior service the claimant never entered upon the first lustrum whereby he was to receive $2,400, but immediately was placed in the second lustrum and received $2,700 per year the first 3 years 4 months and 10 days of his service in the Navy, and for the succeeding 5 years at $3,000 per year.

The third proviso of section 13, of the so-called navy personnel act provides in part as follows:

> * * * and that all officers, including warrant officers, who have been or may be appointed to the Navy from civil life shall, on the date of appointment, be credited for computing their pay with five years' service. * * *

For the convenience of the court, section 13 will be hereafter given in full.

The claimant contends that by virtue of said proviso he became entitled to receive the maximum pay of his grade, to wit, $3,500 per year, on the 19th day of May, 1880, instead of the 19th day of May, 1885. That is, that he is entitled under said proviso to be credited with five years' service as of the date of appointment, January 9, 1877, and thereby to have his pay since that day increased in the amount of $3,505.85.

ARGUMENT.

The claimant contends that the language of the statute is plain and unambiguous and needs no interpretation as it interprets itself; but a fitting answer to this is that the accounting officers differ somewhat as to the meaning of the words used in the statute from the claimant and his counsel; and furthermore, the court below was divided as to the meaning of the language used. When a statute contains words that are of sufficient force and clearness to furnish their own interpretation and meaning without any reference to other sections or parts of the statute, all parties who are interested therein will agree as to the import and meaning of the words used; but where judges and others who are charged with the responsibility of construing a statute differ as to its meaning, then the language used therein is clearly a subject of interpretation and construction.

The act of March 3, 1899, commonly termed the navy personnel act, is entitled as follows: "Chap. 413. An act to reorganize and increase the efficiency of the personnel of the Navy and Marine Corps of the United States."

(See 30 Stat. L., p. 1004.)

Section 13 of said act provides as follows:

> That, after June thirtieth, eighteen hundred and ninety-nine, commissioned officers of the line of the Navy and of the Medical and Pay Corps shall receive the same pay

and allowances, except forage, as are or may be provided by or in pursuance of law for the officers of corresponding rank in the Army: *Provided*, That such officers when on shore shall receive the allowances, but fifteen per centum less pay than when on sea duty; but this provision shall not apply to warrant officers commissioned under section twelve of this act: *Provided further*, That when naval officers are detailed for shore duty beyond seas they shall receive the same pay and allowances as are or may be provided by or in pursuance of law for officers of the Army detailed for duty in similar places: *Provided further*, That naval chaplains who do not possess relative rank shall have the rank of lieutenant in the Navy; and that all officers, including warrant officers, who have been or may be appointed to the Navy from civil life shall, on the date of appointment, be credited, for computing their pay, with five years' service. And all provisions of law authorizing the distribution among captors of the whole or any portion of the proceeds of vessels, or any property hereafter captured, condemned as prize, or providing for the payment of bounty for the sinking or destruction of vessels of the enemy hereafter occurring in time of war, are hereby repealed: *And provided further*, That no provision of this act shall operate to reduce the present pay of any commissioned officer now in the Navy; and in any case in which the pay of such an officer would otherwise be reduced he shall

> continue to receive pay according to existing law: *And provided further*, That nothing in this act shall operate to increase or reduce the pay of any officer now on the retired list of the Navy.

The statute under consideration is found in the third proviso of said section in the following words:

> And that all officers, including warrant officers, who have been or may be appointed to the Navy from civil life shall, on the date of appointment, be credited, for computing their pay, with five years' service.

LITERAL INTERPRETATION.

The claimant in this case contends for a literal interpretation of the words "officers who have been appointed to the Navy from civil life," and devotes a large portion of his brief to citing authorities in support of a literal interpretation. All of these authorities are applicable when there is no reason to doubt that the language used has but one meaning; but where the words are a proper subject for interpretation and construction, we think the authorities cited by claimant in support of a literal interpretation are not applicable. In urging his contention, claimant's counsel quote from Black on Interpretation of Laws (Preface, p. III) to the effect that the doctrine of "equitable interpretation" has become obsolete. Just what doctrine the author meant as having become obsolete he

fully sets forth on page 42 of his valuable work, and says:

> Equitable construction was a principle by which the judges, disregarding the letter of a statute, extended its provisions to cases which, in their judgment, were within the same mischief which the law was designed to remedy, though they were not expressly provided for, or by which, on considerations of justice and right reason, they excepted from the operation of the statute cases which were covered by its terms, but which, in their opinion, were not fairly to be included in it. The power to make such constructions is now disavowed by the courts.

Equitable construction of statutes and the necessity for such construction arose out of the early acts of Parliament, which were brief and general in their terms. The courts proceeded upon what was called the equity of the statute, which was the construction made by the judges that cases out of the letter of the statute yet being within the mischief or cause of the making of the same shall be within the same remedy that the statute provides. (See Sutherland on Statutory Construction, sec. 413.) Of course what has been termed "equitable construction of statutes" in the above sense has been abandoned, but the principle that it is the duty of the court to interpret the will and intention of the law-making power is as much in vogue now as at any time during the history of legislative bodies. Black on Interpretation of Laws has not

abandoned the rule that it is the duty of the courts to find and follow the legislative will when interpreting any given law, and the court below in rendering its opinion in this case certainly did not abandon that well-recognized principle governing the interpretation of statutes. The very first definition given by Black is as follows:

> Interpretation as applied to written law is the art or process of discovering and expanding the intended signification of the language used—that is, the meaning which the authors of the law designed it to convey to others. (See p. 1 of said work.)

The author says:

> The object of all interpretation and construction of statutes is to ascertain the meaning and intention of the legislature to the end that the same may be enforced.

Of course, the meaning and intention should be ascertained, if possible, first from the language of the statute itself, but if the language is ambiguous or doubtful or lacks precision, the intended meaning must be sought by aid of all pertinent and admissible considerations. This is the doctrine announced by all writers on interpretation and construction of statutes. But while the doctrine of "equitable interpretation" of statutes as anciently used may have become obsolete, yet the principle of liberal interpretation and construction is still in force.

> The modern doctrine is that to construe a statute liberally or according to its equity is

> nothing more than to give effect to it according to the intention of the lawmaker as indicated by its terms and purposes. (See Sutherland on Statutory Construction, latter part of sec. 415.)
>
> Where the meaning of a statute or any statutory provision is not plain a court is warranted in availing itself of all legitimate aids to ascertain the true intention, and among them are some extraneous facts. The object sought to be accomplished exercises a potent influence in determining the meaning of not only the principal, but also the minor provisions of a statute. To ascertain it fully the court will be greatly assisted by knowing, and it is permitted to consider, the mischief intended to be removed or suppressed, or the necessity of any kind which induced the enactment, * * * the sense of the legal profession in regard to it, the course and usages of business which it will affect. (See the author quoted, sec. 292.)

Again:

> A statute must be construed with reference to the whole system of which it forms a part. (See sec. 284 of the work cited.)

In construing and interpreting laws the literal sense of the words used in the statute should not necessarily control.

> The mere literal construction of a section in a statute ought not to prevail if it is opposed to the intention of the legislature apparent by the statute; and, if the words

> are sufficiently flexible to admit of some other construction, it is to be adopted to effectuate that intention. * * * *The particular inquiry is not what is the abstract force of the words or what they may comprehend, but in what sense they were intended to be used as they are found in the act.* The sense in which they were intended to be used furnishes the rule of interpretation, and this is to be collected from the context; and a narrower or more extended meaning is to be given according to the intention thus indicated. (See Sutherland on Statutory Construction, sec. 246.)

PROVISOS.

Claimant's counsel devote considerable space in their able brief in support of their proposition that the proviso under consideration is a piece of independent legislation. The office of a proviso is generally either to except something from the enacting clause or to qualify or restrain it generally. It is confined to that which precedes it or to the section to which it is appended, unless clearly intended to have a wider scope. (Black on Interpretation of Laws, 273; *Minis* v. *United States*, 15 Peters, 423; *Ryan* v. *Carter*, 93 U. S., 78; *Wyman* v. *Southard*, 10th Wheat., 1, 30.)

A proviso is always to be read in connection with the section or paragraph of which it forms a part and of which it is a proviso. It is true it often happens that independent legislation is intro-

duced in the shape of a proviso, but this particular proviso can not be regarded as independent legislation. It relates directly to the particular subject of section 13, namely, the pay of officers of the Navy and officers whose pay is by said section to be construed with reference to the pay of Army officers who receive the full benefits of the credit of service herein provided. It is true that the proviso enlarges, instead of restraining, the operation of the section, but this is sometimes made the office of a proviso. It is therefore properly to be treated as a limitation to and a part of section 13, and not as independent legislation, and should be held to go into effect at the same time as the main provision of the section to which it is attached, namely, July 1, 1899; and so considered it comes within the operation of the rule that when the legislature fixes a future date for an act to go into effect it thereby stamps it with a prospective character and precludes the construction that it is to be treated as retrospective. The reason is evident, as illustrated by this case. If it had been the purpose or intention of Congress to have granted the plaintiff an absolute sum of money upon the service already rendered, there is no apparent reason why it should postpone the granting to a future date. While provisos may be, and frequently are, used as independent pieces of legislation, as well as to carve special exceptions only out of the enacting clause, yet the language used by legislators must be considered from the view point of the body enacting

the law when legislating upon the subject under consideration, and in determining the nature of provisos the intention of the whole act will control the interpretation of the parts, and this interpretation is to be ascertained by considering the entire statute.

> Where the words * * * employed by the legislature do not directly apply to the particular case we must consider the object of the act. (See last of section 241, Sutherland on Statutory Construction.)

The third proviso of section 13 embodies within it the legislation and words sought to be interpreted by the court, and in doing so the court of course will consider the purpose and intention of the whole legislation contained within the act, which is entitled "An act to reorganize and increase the efficiency of the personnel of the Navy and the Marine Corps of the United States." The title states clearly the purposes and objects of the act, and all legislation embodied within the same must be considered as having in view and contemplation the accomplishment of the objects sought as indicated by the title, unless there is a clear, definite, and plain intention of the legislators that the proviso or exception is meant to be a piece of legislation absolutely separate, apart from, and independent of the subject under discussion. No such intention is indicated by this proviso. If any other legislation was intended to be a part of the act, Congress would undoubtedly have indi-

cated specifically and clearly just what legislation was incorporated in the act not pertinent to the object by using unmistakable terms.

As forcibly expressed in the opinion of the court below in this case:

> The purpose of the act as expressed in the title thereto is "an act to reorganize and increase the efficiency of the personnel of the Navy and the Marine Corps of the United States," and while the body of an act can not be controlled or restrained by the title it may be referred to in connection with the language of the act to ascertain the meaning of the statute where the language is susceptible of different construction. (*Church* v. *United States*, 143 U. S., 457.)
>
> It can hardly be contended that a payment of a gratuity has anything to do with the reorganization or the increasing of the efficiency of the Navy.

IS THE STATUTE IN QUESTION RETROACTIVE LEGISLATION?

Except in the case of remedial statutes, and those which relate to procedure in courts, it is a general rule that statutes do not operate retrospectively unless it is explicitly so declared, or unless such intention appears so clearly as to leave no room for a reasonable doubt on the subject. This is the doctrine announced by Black on Interpretation of Laws, Cooley on Constitutional Limitations, and a large number of cases cited by said authorities.

> Retrospective laws being in their nature odious, it ought never to be presumed that

> the legislature intended to pass them where the words will admit of any other meaning. *Underwood* v. *Lilly* (10 Serg. & R. 97, 101.)
>
> Legislation of this character is exceedingly liable to abuse, and it is a sound rule of construction that a statute should have a prospective operation only, unless its terms show clearly the legislative intention that it should operate retrospectively. (Cooley on Constitutional Limitations (6 ed.), 455.)
>
> Generally when the legislature desires that the statute shall operate upon past or present facts or transactions, as well as upon future transactions, its intention in that regard will be expressed by apt words. (Black on Interpretation of Laws, 252.)

We think the argument of claimant's counsel on the question of retrospective legislation is answered by the fact that there were in the Navy at the time this act was passed officers appointed from civil life whose future pay would be increased by the credit of five years' service as "on the date of appointment," but who, of course, would have received no increase of pay had the statute been limited to future appointments only. The law operates for those already appointed, as well as for those who might thereafter be appointed, where the credit for service would increase their future pay. Of past appointees it benefited both those who would have continued to be paid according to old navy rates, and who were serving in the grades to which appointed from

civil life, but had not reached their maximum rates, and also those who would be paid according to army pay, whether serving in the grades to which appointed or not and who had not reached their maximum rates.

Statutes relating to increased pay have universally been held to be prospective unless by their language or by necessary implication a different construction becomes imperative, notwithstanding they may apparently operate unjustly toward officers who have previously rendered similar services for less money, and notwithstanding the law may operate to increase the pay of one officer and not that of another in the same grade.

The act of February 24, 1881 (21 Stat. L., 341), provided for army officers that "the actual time of service in the Army and Navy, or both, shall be allowed all officers in computing their pay." This statute has always been held to operate prospectively, although at the time it was passed many officers had reached their maximum rates of pay for length of service, and could not receive any benefit from the additional credit which they were to receive unless the statute should be construed retrospectively so as to increase their pay for prior services, as it is contended that the statute under consideration should be construed.

Prior to the act of July 15, 1870 (16 Stat., 315, 330), most of the lower grades in the naval service to which first appointments are commonly made were not graded for pay for length of service. By

that act, the provisions of which relating to pay are found in section 1556, Revised Statutes, different rates of pay were prescribed for different grades, varying in each grade according to length of service or the number of pay periods of given length which the officer should serve in that particular grade. It would follow, therefore, that an officer appointed from civil life to a grade not having graduated pay and promoted to another grade before the act of 1870 gave graduated pay to the grade to which he was appointed would derive no benefit whatever from now receiving the five years' credit as of date of appointment.

By way of illustration, take the case of Captain A., United States Navy, who entered the service from civil life July 5, 1862, as acting master. He was promoted to master March 12, 1868, and to lieutenant December 18, 1868. During the time he was acting master the pay of those grades was not graduated for length of service. If credited now with five years' service as "on date of appointment," his record would stand as though he had rendered five years' service as acting master on July 5, 1862, or as though he had been appointed July 5, 1857. This additional service would have had no effect whatever upon his rate of pay during the time he was acting master or master in the Navy. By the act of July 15, 1870, the pay of the grade of master was increased and graded according to length of service in that

grade, but having been promoted before that time to the grade of lieutenant he derived no benefit from said act. So it appears that, notwithstanding this act be construed retroactively, he would receive no increase of pay, though credited, as the law directs, with five years' service "on date of appointment." Retrospective interpretation not only does not relieve the statute from inequality in its operation, but does not relieve it from requiring what seems to be the useless act of crediting an officer's record with service for the purpose of computing his pay, when in fact such credit will have no effect upon his rate of pay.

To illustrate further the inequality of the operation of the statute if construed retroactively, take the two cases of Pay Director B, United States Navy (retired), and Paymaster-General C, United Navy, both of whom were appointees from civil life.

B entered the service September 2, 1856, as purser, the name by which paymasters were then called. At that time this grade was graduated according to length of service therein for pay purposes only for the time the officer was on leave or waiting orders. If B were given five years' credit as of September 2, 1856, and his pay increased accordingly from that date, he would receive $200 per annum more pay than he did receive during the time he was on leave or waiting orders. By the act of June 1, 1860 (12 Stat., 25), the pay of paymasters (still called purs-

ers) was increased, and also an increase given for length of service, whether at sea, on shore duty, or waiting orders, the pay being rated by periods of five years' service up to twenty years, when they reached their highest rates of pay for length of service. B. would receive the benefit of the five years added to his service to increase his pay through these various periods until he had reached his maximum, which, of course, would be just five years sooner than he did reach it. If the statute be applied to his past service, he would receive approximately $5,000 additional.

Paymaster-General C. entered the service as assistant paymaster March 19, 1862, and was promoted to the grade of paymaster March 9, 1865. Assistant paymasters received certain rates of pay at sea, on shore duty, or waiting orders, during the first five years after date of commission, and increased rates after that period. The proposed credit of five years would give C. the maximum rates of pay from date of appointment. The difference between pay during the first five years and pay after five years being $200 per annum, whether at sea, on shore, or waiting orders, would amount in his case to $1,000, provided he has received no credit for service under any other act. But his service as assistant paymaster, or his credit for service as an appointee from civil life, can not avail him to increase his pay in the grade of paymaster through any of his pay grades up to twenty years, when he reaches his maximum rates of pay. Pay Director B, there

fore, receives the full benefit of his five years' constructive service to increase his pay as paymaster, while Paymaster-General C gets no benefit whatever therefrom, simply because he entered the grade of paymaster through the grade of assistant paymaster, which latter grade had no existence when B entered the service as purser or paymaster.

Another inequality flowing from the proposed retrospective operation of the statute may here be noted. Since the Navy personnel act officers of the line and of the Medical and Pay Corps are, with certain exceptions, paid according to the Army rates of pay, while the other officers and some also in the corps mentioned receive pay according to the Navy schedule formerly existing. Officers now paid according to Army rates would, under such construction, receive the five years' credit for appointment from civil life so as to increase their pay in the grades in which they were appointed, and would also receive credit for the same service in estimating their current pay according to Army rates, thus receiving a double benefit. On the other hand, officers paid according to the Navy rates could receive the benefit of but a single credit, and that in the grade in which they entered.

It is true that these inequalities are not of themselves an argument against the proposed retrospective construction, were the language of the statute such as to require such construction, but it must not be forgotten that that is the point in

issue—whether or not the language does require that construction—and in arriving at the will of Congress it is proper to take into consideration all the conditions surrounding the enactment of the law when the language itself is not explicit. At all events, the foregoing illustrations effectually dispose of the contention that the law should be construed retrospectively in order that it may operate equally, and not require the useless formality of giving a credit of service for pay purposes where a credit would do no good.

GRATUITIES.

Counsel for claimant devote a large portion of their brief to the discussion of "legislative gratuities," and state as follows:

> The opinion of the Court of Claims treats the granting of a gratuity by Congress as something of so extraordinary character that all presumptions must be against it. Whatever may be said by philosophical statesmen upon the evils of gratuities, the giving of gratuities to persons of present or past military and naval service is a common feature of Congressional legislation.

We think counsel are in error when they state that the opinion of the court below "treats the granting of a gratuity by Congress as something of so extraordinary character that all presumptions must be against it." The opinions rendered by the Court of Claims in cases where the statute has been under construction, including the case at bar,

do not discourse upon evils of gratuities. They nowhere condemn gratuities; they give no license for such assumption by counsel. The furthest extent upon the subject that the opinions reach is that when granting gratuities the legislative power *must use language that will admit of no doubt of its intention*, and we know of no authority that holds to any different doctrine.

CONSEQUENCES OF THE STATUTE.

The doctrine of inconvenience.

Claimant's attorneys show the consequence of the statute under consideration if their view in this case is correct, to wit, that there is due their client the sum of $3,506.85 by reason of five years' credit service. If anything further were necessary to be presented on the part of the Government than what has already been argued as to why this statute could not receive the interpretation asked for by claimant's counsel, we might very properly urge the doctrine of *Inconvenience*, inasmuch as the statute seems ambiguous.

It is a well-known principle that—

> In the consideration of the provisions of any statute they ought to receive such a reasonable construction, if the words and subject-matter will admit of it, as that the existing rights of the public or of individuals be not infringed. Considerations of what is reasonable, convenient, or causes hardship and injustice have a potent influ-

> ence in many cases. * * * (See section 322 of Sutherland on Statutory Construction.)

Again,

> A construction which must necessarily occasion great public and private mischief must never be preferred to a construction which will occasion neither, or not in so great a degree, unless the terms of the instrument absolutely requires such preference. (Section 323 of above work.)
>
> * * * The considerations of evil and hardship may properly exert an influence in giving a construction to a statute *when its language is ambiguous or uncertain and doubtful*, but not when it is plain and explicit. * * * The argument of inconvenience is very strong with the statute, is ambiguous, and fairly open to two constructions. (See section 324 of the work cited.)

The well-known doctrine of Inconvenience is upheld by Black on Interpretation of Laws, Endlich on the Interpretation of Statutes, and by every other author that we have consulted on statutory interpretation and construction. Of course it only applies when the statute sought to be interpreted is doubtful or ambiguous or fairly open to more than one construction. By consulting the roster of the Navy of the United States it will be found that some six hundred officers have been appointed to the Navy from civil life. Inasmuch as these officers are on the roster of the Navy, may we not

assume that the court will take judicial notice of the fact when attention is called thereto.

If the interpretation that claimant's counsel seek to place upon the statute under consideration is the correct one, and the court should so find, it undoubtedly would open the doors of the United States Treasury to nearly all of these six hundred officers for claims of like nature to the one under consideration. And if each of their claims were as large as claimant's demand they would draw from the Treasury some two millions of dollars in the nature of an absolute gratuity granted by the United States.

Again, such a construction of the statute would entail endless confusion in readjusting the pay of each one of these six hundred officers of the Navy appointed from civil life, so that each of them could receive his proper proportion of increased pay by reason of being credited with five years' service at the date of his appointment. They draw different salaries for different kinds of service according to their rank and grade. They fill positions in the Medical Corps, the Pay Corps, chaplains, professors of mathematics, civil engineers, carpenters, and Marine Corps; and to readjust the compensation of these officers upon the principle contended for by claimant's counsel would be an endless and almost impossible task, a result that Congress did not contemplate, and an injustice to the United States Government that it did not intend.

The cases of A, B, and C, to which we have referred in the body of this brief, indicate what hardships and injustice would result to the defendants and what great public and private mischief would be incurred should the claimant prevail in his construction of the statute under consideration; while, on the other hand, the interpretation contended for by defendants would occasion neither hardship, private mischief, injustice, nor inconvenience, but is equitable, just, and, as we believe, in accordance with the intention of Congress.

A LITERAL READING OF THE STATUTE DOES NOT SUPPORT CLAIMANT'S CONTENTION.

Finally we insist that, adopting claimant's contention that the statute under consideration should be read literally, it nevertheless furnishes no basis for this claim. At the outset it is clear that it is impossible to make a literal application in the claimant's case of the words of the statute "shall on the date of appointment be credited * * * with five years' service," since "shall" implies future action, and the date of the claimant's appointment has long since passed. Accordingly, to meet the claimant's case it is necessary to change the literal words of the statute so as to read "shall as of the date of appointment be credited." Passing this, however, and giving the claimant the benefit of this change in its literal language, the statute still furnishes no foundation for the claimant's contention, for it simply directs

that the record of the service of the officers mentioned shall be increased five years by adding thereto a term of five years immediately prior to the date of their appointment, and that this shall be done "for computing their pay." But the pay of such officers is their official salary—their compensation for services rendered in the execution of the duties of their official position. The computation of this pay rests with the paymaster, and is done by him from time to time pursuant to the statute and having reference in each case to the continued term of service of such officer.

The effect of compliance with this statute upon the computation of the pay of each such officer is to increase from the date that the statute took effect the amount of salary to be thus computed for every officer except those who at the time that the statute went into effect were already receiving their maximum pay. It is for just this literal compliance with the statute that the defendant asks. Such action would result in giving the benefit of the statute in the way of additional pay not only to every officer contemplated therein appointed after the statute went into effect, but also to every such officer who at the time was not receiving maximum pay, thus embracing within its provisions for computation of pay all officers, including warrant officers, "who *have been or may be appointed* to the Navy from civil life," except those to whom the statute can not be made applicable. The claimant, however,

asks for something absolutely outside the plain and literal language of the statute. That which he calls for, instead of being a computation of his pay, is a revision of his past account, and this, as he himself acknowledges, by bestowing a gratuity, there being no sort of pretense that he has in any way earned the increased amount that he asks for, nor that there is any consideration whatever for it. His claim, summed up, is that the literal language of the statute should be so changed as to read in his case "for the purposes of a revision of the claimant's official account with the United States in order that a gratuity may be computed for him."

The claimant insists that such an interpretation of the statute is warranted by the decision in the case of *Hawkins* v. *The United States* (19 C. Cls. R., 611), but the language of the statute upon which that decision was based is so absolutely unlike that of the statute under consideration, and the decision itself is so clearly rested upon the peculiar language of that statute, that there is no practical resemblance between the cases. In the Hawkins case the act of March 3, 1883, relied upon, is quoted as follows in the decision of the court:

> And all officers of the Navy shall be credited with the actual time that they may have served as officers or enlisted men in the Regular or Volunteer Army or Navy, or both, and shall receive all the benefits

of such actual service in all respects in the same manner as if all said service had been continuous and in the Regular Navy *in the lowest grade having graduated pay held by such officers since last entering the service: Provided*, That nothing in this clause shall be so construed as to authorize any change in the dates of commission or in the relative rank of such officers: *Provided further, That nothing herein contained shall be so construed as to give any additional pay to any such officer during the time of his service in the Volunteer Army or Navy.*

Commenting upon the same, the court said:

> The claimant contends that this clause is retroactive in its operation, and has the same effect in bestowing benefits on him as if it had been in operation before he entered the regular Navy, and that one of those benefits was to allow him, from the time he was appointed boatswain, a higher rate of pay than, by the Navy pay table, he would be entitled to if his pay were computed from the date of his appointment to that office.
>
> On the other hand, the defendants insist on the well-understood rule that, as a general proposition, every law must be held to be only prospective in its operation, and that no law should be held to be retroactive unless the intent to make it so be clearly manifested by its terms.
>
> Conceding this, we think it manifest on the face of the clause that it was meant to be retroactive, and it is not for the Govern-

ment to object to the character which itself has given to its own legislative grant of benefits to its own officers. It is, we think, quite impossible for the claimant to "receive *all* the benefits * * * in *all* respects" which the clause intends him to receive, if the clause should be held to be prospective only in its operation.

* * * * *

The question then is, whether he is entitled to more pay than he has received; and if so, how much.

The answer to this is connected with the words "shall receive all the benefits of such actual service in all respects in the same manner as if all said service had been continuous and in the regular Navy."

What is meant there by the word *benefits?* We believe there is no difference of opinion that it might fairly be considered to include three things: (1) Higher rank, resulting from greater length of service; (2) earlier period of retirement on the officer's own application after forty years' service, as authorized by section 1443 of the Revised Statutes, and (3) increase of pay.

* * * * *

But, as we have seen, a boatswain's pay is graduated by his length of service after the date of his appointment, increasing with every three years' period of service up to twelve years, after which one more and the final increase of pay takes place.

It is contended that, inasmuch as the law

establishes those grades of pay, and the clause in question does not *expressly* declare that credit for volunteer service shall give title to increased pay, therefore it was not the intention of Congress to authorize any such increase. This provision does not seem to us to be tenable, for several reasons.

1. If it be true, it cuts off all benefits resulting from credit for volunteer service, except the far distant one connected with the officer's retirement, which he may not live long enough to avail himself of. 2. If the clause can fairly be considered to *imply* a right to increased pay, that implication is as much a part of it as what is expressed. (*United States* v. *Babbit*, 1 Black, 55; *Gelpcke* v. *Dubuque*, 1 Wallace, 175.) 3. The second *proviso* of the clause seems to us to justify the implication that the legislature did intend that one of the benefits to result from credit for volunteer service should be increase of pay, at such time and to such extent as the length of that service should be found to authorize. That proviso says:

"Nothing herein contained shall be so construed as to give any additional pay to any such officer during the time of his service in the Volunteer Army or Navy."

The presence of this proviso puts its beyond question that Congress had before them, when the clause was pending, the matter of its effect on the question of pay. We are not at liberty to assume that, with that before them, they took note of only

> one aspect of it; but must suppose that they saw it in all its bearings, and intelligently knew what they were doing, and what they were leaving undone. If it was their intention not to allow an officer appointed in the Regular Navy any increase of regular navy pay, on account of volunteer service credited to him, nothing more was needed to effect that object than to strike out of the proviso all after the work "officer." The prohibition would then have been complete, not only as to future service in the Regular Navy, but as to past volunteer service. When, therefore, they limited the proviso to the mere point of forbidding the allowance of additional pay for the time of the volunteer service, it seems to us fairly to indicate their intention that the officer should, in the regular Navy, have whatsoever benefit, in the matter of pay, would legitimately result from giving him credit for his volunteer service. Nothing less than this would, in our judgment, meet and fill the previous words "all the benefits * * * in all respects."

It will thus be seen that the court construed the statute of 1883 to have retrospective action, because in no other wise could compliance be made with its requirements that the persons named should "receive all the benefits * * * in all respects" of being credited with the actual time they may have served as officers or enlisted men in the Volunteer Army or Navy of the United States; and that the correctness of this interpre-

tation was emphasized by the proviso dwelt upon by the court: "Nothing herein contained shall be so construed as to give any additional pay to any such officer during the time of his service in the Volunteer Army or Navy," clearly showing that the subject of granting retrospective pay was expressly under consideration at the time that the statute was passed. The analogy which the claimant asserts between the statutes fails also in this: That by the statute of 1883 the retrospective pay which was claimed was essentially pay and not a gratuity, for it resulted from giving to the persons named the benefits of increased longevity by reason of actual service for which they had theretofore received no credit, and not, as contended for in this case, for purely constructive service; and it is worthy of note that the claimant in this case has received the benefit of this statute of 1883 by being credited with his service in the Army, amounting to six years seven months and twenty-one days, previous to his entry into the Navy.

The decisions of this court, in which this statute of 1883 was considered, relied upon by counsel for claimant attempt in no way to modify the reasoning of the Court of Claims in the Hawkins case, and therefore do not, it seems to us, call for any discussion on our part.

It seems to us that the reasoning of Justice Peelle, in announcing the opinion of the majority

of the court below in this case, is eminently logical and just, and that for the reasons thus stated the judgment of the Court of Claims should be affirmed.

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